



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Wamalwa (Criminal Case E037 of 2025)
[2025] KEHC 16198 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16198 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL CASE E037 OF 2025
J WAKIAGA, J
NOVEMBER 11, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JACOB SAIDI WAMALWA ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, the particulars of which were that on the night of 17th and 18th day of March 2025 in Jua Kali area Embakasi east Sub-County of Nairobi County, jointly with others not before the court, murdered one Naomi Wangari Mwangi alias Marion.
2. He pleaded not guilty and in compliance with the provisions of Article 49(1) (h) of *the constitution*, the prosecution filed and served an affidavit opposing bond, sworn by CPL Joseph Mwangela in which it was deposed that the deceased was murdered after being assaulted raped and strangled to death by the accused and another person not before the court.
3. That the accused was arrested following an intelligence led operation by the homicide detectives. It was contended that the accused did not have a current fixed place of abode, having ran away from his friends residence, after the commission of the offence. It was contended that the local boda boda community within Kwa Ndege Area were apprehensive of his behaviour. He was unwelcomed in the area as per the information shared by the Nyumba Kumi officials of the area.
4. It was deposed that the area was still hostile to the accused and therefore his safety was not guaranteed. It was contended further that the other suspect who was still at large posed a threat to the accused as he may not want to be associated with this matter. It was further contended that the prosecution witnesses were known to the accused and were likely to be compromised, harmed or intimidated by the accused person.



5. In response the accused filed a replying affidavit in which it was contended that he had a fixed place of abode with strong family ties within the jurisdiction of the court and that he had consistently cooperated with the investigators , including giving DNA samplings and attending to interrogations and recording statements.
6. It was contended that contrary to the prosecution contentions that his co-accused is yet to be arrested, the same had already been arrested and charged and was currently out on bond. On the interference with witnesses it was contended that the same had recorded their statements and that there was no evidence of interference and no witnesses was identified as threatened or vulnerable.
7. It was contended further that he was the sole bread winner of his family of four and was also supporting his siblings , who depended upon him for support and therefore his continued detention will cause them immense hardship.

Pre-bail Report

8. In compliance with the Bail /bond policy guidelines, the court called for pre-bail report in which it was contended that the accused is the first born of his family and that since his father is struggling with alcoholism, the accused had been the primary provider for his siblings, particularly in supporting their education. The family was willing to support the accused , post bond and ensure his regular attendance to court.
9. At the time of the arrest , the accused was working as private driver. He was married but the marriage broke down with the accused having the custody of the issue of the marriage who had since been placed in the care of his uncle and that the child had shown signs of emotional and psychological distress in the absence of his father.
10. On community ties the accused was known to the area chief and village elder and had no objection to his being released on bond.
11. On the victim's concern, it was stated that the same was aged 29 years casual worker married to one Cornelius Ekaset with one child aged nine, who had since been placed under the care of her maternal grand mother in Bungoma. The deceased husband objected to the release of the accused on bond on the ground that he was still mourning the death of his wife. The deceased sister and father also expressed the fact that the death had caused the family emotional trauma and economic hardship. They objected to the release of the accused on bond.

Submissions

12. At the hearing Ms Ogwen for the State, submitted that there was a suspect who was still on the run and if the accused was released, efforts to arrest the same will be prejudiced. She further contended that the family of the deceased as per the pre-bail report were opposed to the release of the accused on bond.
13. Ms Manyariki for the accused submitted that the same has a fixed place of abode in Embakasi and that the claim of hostility was speculative since it was the duty of the State to provide security to its citizens including the accused person. It was contended that the accused alleged co-accused one Evans Magomere Kisago was arrested and released on bond and that inability to arrest a suspect should not be used to deny an accused bond.



Determination

14. Bond/bail is a constitutional right of every accused person under Article 49(1)(h) of *the Constitution* which can only be limited where there is compelling reasons advanced by the prosecution to the satisfaction of the court on a balance of probability.
 1. What constitute compelling reasons has now been settled in Kenya, through the Bail/Bond Policy Guidelines and as captured by the Court of Appeal in Oyamo case that bond is a constitutional right of every accused person under Article 49 and may only be limited if the prosecutions provide to court compelling reasons which the Court of Appeal in Michael Juma Oyamo & another versus Republic [2019] eKLR stated to be forceful and convincing as to make the court feel strongly that the accused should not be released on bond , thus the accused should not be denied bond on flimsy ground but on real and cogent grounds that meet the constitutional standards .
 2. These reasons are captured in section 4.9 of the Bail and bond Policy Guidelines which were further captured in section 123A (1) of the Criminal Procedure Code
 3. The court however should not lose sight of the fact that the purpose of bond is and remains to secure the attendance of the accused to court during the period of his trial and that the right to liberty should never be curtailed as was stated in Republic versus Nuseiba Mohamed Haji Osman [2018] eKLR, denial of a constitutional right is not to be treated lightly and any claim made against an accused person towards curtailing his liberty must not be made on speculation and conjectures
15. In this cause the only reasons advanced by the prosecution is that the accused has no fixed place of abode, there is hostility, and one of his accomplices is still at large.
16. The accused has responded to these issues by the prosecution through an affidavit and stated that he has a source of livelihood and adequate social ties. He has also deposed that his alleged a accomplish had been arrested a fact that the prosecution has not disputed. On the allegation of witness interference, the prosecution failed to give the names of the said witnesses and the nature of interference, with the only allegation being that they are friends of the accused, which on its own can not be a ground for denying an accused person bond.
17. I am therefore satisfied that the prosecution has not provided adequate compelling reasons and that those advanced can appropriately be ring fenced by bond terms and conditions.
18. I have also taken into account the rights and interest of the accused child who is now in the custody of the accused uncle and take the view that the accused having been charged with a capital offence, where one of the possible sentences is death, need to spent sometimes with the said child during the trial as the out come thereof is not known at this time of the proceedings.
19. The accused shall therefore be released on the following terms and condition
 - a. Bond of Kenya Shillings Five Hundred Thousand (Kshs 500,000/=) with one surety of like amount
 - b. In the alternative cash bail of Kshs. 250000/= (Kenya shillings Two Hundred and Fifty Thousand) with one surety of like amount
 - c. The accused shall make no contact with any of the intended prosecution witnesses in whatever nature and form, unless the same is done in the presence of the Investigating Officer.



20. And it is ordered.

DATED SIGNED AND DELIVERED THIS 11th DAY OF NOVEMBER 2025

J. WAKIAGA

JUDGE

In the presence of

Court Assistant - Irene

Ms Ogweno for the State

Ms Manyarakiy for the accused

